| | |
|---|---|
| **IN THE MATTER OF ARBITRATION** | **OPINION & AWARD** |
| **-between-** | **Grievance Arbitration** |
| **THE MINNESOTA NURSES ASSOC.** | **Re: Health Insurance Coverage** |
| **-and-** | |
| **REGINA MEDICAL CENTER HASTINGS, MINNESOTA** | **Before: Jay C. Fogelberg Neutral Arbitrator** |

**Representation-**

For the Association: Phillip Finkelstein, Attorney

For the Employer: James Dawson, Attorney

**Statement of Jurisdiction-**

The Collective Bargaining Agreement duly executed by the parties provides, in Article 30, for an appeal to binding arbitration of those disputes that remain unresolved after being processed through the initial two steps of the procedure. A formal complaint was submitted by the Association on behalf of the Grievants on November 18, 2004, and thereafter appealed to binding arbitration when the parties were unable to resolve the matter to their mutual satisfaction during discussions at the intermittent steps. The undersigned was then mutually selected by the parties as the Neutral

Arbitrator to hear evidence and render a decision. A hearing was convened in Eagan, Minnesota on December 14, 2005. At that time, the parties were afforded the opportunity to present position statements, testimony and supportive documentation. At the conclusion of the proceedings, each side indicated a preference for submitting written summary statements. They were received on January 28 ,2006, at which time the hearing was deemed officially closed. The parties have stipulated that all matters in dispute are properly before the Arbitrator for resolution on their merits, and while they were unable to agree upon a precise statement of the issue, the following is deemed a fair description of the question to be considered.

**The Issue-**

Did the Employer violate Article 29 of the Master Agreement when it unilaterally modified the plan design for the health insurance coverage provided to the bargaining unit members, effective January 1, 2005? If so, what shall the appropriate remedy be?

**Preliminary Statement of the Facts-**

The adduced evidence indicates that the Grievants are Registered

Nurses working at the Regina Medical Center (hereafter "Center", "Employer" or "Administration") located in Hastings, Minnesota. As such, they are members of a collective bargaining unit represented by the Minnesota Nurses Association ("Union" or "Association") which, together with the Administration, has negotiated and executed a labor agreement covering terms and conditions of employment (Joint Ex. 1).

The Employer operates a health care facility that consists of a forty-four bed hospital, as well as a nursing home, an assisted living facility and a medical clinic. In all, it employees approximately 690 men and women – about half of whom are represented by a union.[1]

The Nurses' Agreement provides health insurance coverage for the bargaining unit members, as set forth in Article 29, *infra.* In 2004, there was a three-tier self-insured plan in place, which contained various levels of coverage, deductibles, and out-of-pocket expenses, depending upon the level selected. The evidence reveals that the vast majority of the nurses in the bargaining unit opted for the superior coverage called "Level 1." In the fall of that year however, the insurance broker hired by the Employer ("Hayes") notified them that based upon rising costs and an inordinate claims rate that year, it was estimated that a significant increase in

[1] In addition to the MNA, AFSCME and the Service Employees Local 113 represent various support personnel at the facility.

premiums for 2005 (approximately 33%) would be necessary, should the same level of benefits and options be maintained. In response, the Administration asked their broker to examine various changes in the plan's design in order to hold down costs. Ultimately, it was determined that the three level option would be replaced by a "Silver" and a "Gold" plan which would be offered for 2005. The former was identical to the 2004 Level 1 plan, while the latter replaced the mid-level and high-level plans offered that same year. Pursuant to a requirement in Section 29.1 of the Agreement, the Center's Director of Human Resources, Kristin Swenson, notified the Union's Business Representative, Jerry Hatalla, on November 12, 2004 of the Employer's intent, "...to make a change in the health plan offered employees" (Union's Ex. 1).[2] The changes would, at the higher (Gold) level, include among others, a new deductible for single coverage that did not exist under the previous plan, a higher deductible for family coverage, a decrease in hospitalization coverage, and an increase in the maximum out-of-pocket exposure for the bargaining unit membership (Association's Ex. 3).

Following further discussions between the parties regarding the Administration's intent, the Union filed a formal (class-action) complaint on

[2] The same plan was offered to all employees at the facility, union and non-union alike.

November 18, 2004 alleging a violation of Article 29 of the Master Contract (Joint Ex. 2). Thereafter, the matter was appealed to binding arbitration when the parties were unable to resolve the matter to their mutual satisfaction.[3]

**Relevant Contract Provisions-**

Article 29
Insurance

**29.1** The Medical Center will provide for full-time and part-time....hours per registered nurses who subscribe to single coverage under the existing or substantially equivalent major medical, health and hospitalization insurance plan on the following basis:

The nurse will contribute twenty (20%) percent of the monthly premium per month toward the single coverage plan.

Dependent coverage under said insurance plan will be available at the nurse's expense. The Medical Center will contribute twenty-five dollars ($25.00) per month toward dependent coverage. Effective June 1, 2005, the Medical Center will contribute for full-time and part-time...registered nurses who subscribe to dependent coverage, fifty percent (50%) of the monthly premium per month toward this dependent coverage and the employee will be responsible

[3] In the written grievance, Representative Hatalla indicates that the Union was seeking a "make whole for any and all losses that may occur as a result of the change" (Joint Ex. 2). However, subsequently , in a letter to the Employer's attorney, MNA Labor Counsel, Phil Finkelstein wrote: "...it is not the Minnesota Nurses Association's intent to change the current plan design but rather to obtain an arbitrator's ruling that the Employer's action in changing (i.e. diminishing) the plans violated the Insurance Recognition and Duration clauses in the Labor Agreement" (Employer's Ex. 1).

for the remaining fifty percent (50%) if he or she desires coverage.

The benefits of such insurance plan or any replacement plan selected by the Medical Center shall not be substantially diminished from any preceding plan. The Medical Center will notify the Association of any proposed change in the insurance plans.

**Positions of the Parties-**

The **ASSOCIATION** takes the position in this matter that the Center violated the terms and conditions of the parties' Labor Agreement when it unilaterally imposed a new plan design that significantly diminished the benefit levels accorded the Grievants in 2005, over the preceding year's plan. In support, the Union contends that the language in Section 29.1 is very clear and very specific, prohibiting a substantial diminishment of the plan from one year to the next. The new plan for 2005 contained a number of changes relating to deductibles, out-of-pocket maximums, co-pays and coverage – all of which resulted in a significant reduction in the level of the benefit accorded the Registered Nurses. Further, they maintain that these wholesale changes were made without any negotiations with the Union and effectively shifted some 27% of the increased cost of the coverages to the employees. Forty-six of the forty-eight members of the bargaining unit have carried the highest level of

coverage for a number of years, and to impose the reduced benefit and increased premiums on them without first negotiating with the MNA, is clearly contrary to the intent of the Master Agreement. Accordingly, for all these reasons, they ask that the grievance be sustained; that the Employer be instructed to negotiate with the Association over any future changes, and; that the Grievants be made whole for all additional premiums paid and/or loss of coverage incurred in calendar year 2005.

Conversely, the **EMPLOYER** takes the position that there has been no violation of the parties' Collective Bargaining Agreement. In support of their claim, the Administration contends that dating back to the late 1970s and going forward, they have established premiums based upon the health insurance plan selected, and then negotiated with the Union regarding how much the employees would contribute towards their elected coverage. In the fall of 2004, the Medical Center's insurance broker notified them that based upon their experience to date for that year, and projecting for the balance of the year, they anticipated an inordinate increase in premium costs for 2005 (estimated to be approximately 33%). The Administration maintains that they acted prudently and responsibly in seeking a new plan for 2005, based upon this information. While the new plan design eliminated the three-level options

offered in 2004, they nevertheless kept the "base plan" in tact, while giving it a new name. The new plan did include higher deductibles and co-pays for those who elected the "Gold" option, but this is consistent with adjustments that have been made by Management in the past without challenge from the MNA. The Employer argues that, with the exception of the nurses, all of the bargaining units and the non-organized employees as well, accepted the new plan. Consequently, if they were to be "carved out" and have their own separate plan, retaining most of the features of the high-end options offered in 2004, the Grievants' premiums would increase markedly over the 2004 rates. For all these reasons then, they ask that the grievance be denied in its entirety.

**Analysis of the Evidence-**

This contract interpretation dispute places the initial burden of proof upon the Union to demonstrate via a preponderance of the evidence that the Administration's actions, in modifying the Grievants' medical coverage for calendar year 2005, violated the terms and conditions of the parties' Collective Bargaining Agreement. When all of the evidence and attendant arguments have been carefully considered, I conclude that the MNA has fallen short of their obligation in this instance.

No one disputes that this grievance has its genesis in the action taken by the Center when, in November of 2004, they informed the Union that they "...intended to make changes in the health plan" effective January 2005 (MNA's Ex. 1).[4] Similarly, there is no question but that those changes involved adjustments to the then existing coverages in terms of the options offered, the deductibles, out-of-pocket maximums, premium increases, as well as the "benefit percentages" (Union's Ex. 3). The record also demonstrates the parties are essentially in agreement that these modifications came about as a result of the significant rise in health care costs that in calendar year 2004 alone, increased some 43% (Administration's Exs. 3 & 4). These facts serve as the backdrop against which the language in the Master Contract is to be interpreted and the positions of the parties evaluated.

According to the Association, the Employer's actions constituted "large-scale changes" that substantially diminished the benefits of the Registered Nurses – an act that is specifically prohibited in Section 29.1. While at first blush, the alterations made would appear to constitute an extensive reduction in the benefit accorded the members of the bargaining unit, a closer examination of the applicable language, the

[4] The record shows that the modifications were instituted unilaterally by Management.

practice of the parties, and the options facing the parties, reveals that there was no contract violation.

Initially, it is observed that all reference to the prohibition against substantial diminishment in the insurance article (29, *supra*) is to the singular word "plan." In fact, nowhere in the article is the word "plans" used. Section 29.1 merely states that the Center will not substantially reduce the "benefits" from one "plan" to the next. Significant by its absence, is any reference to the plan design or to any prohibition against the substantial diminishment of all *plans.* The evidence demonstrates conclusively that what was formerly known as the "low" or "base" plan in 2004, remained virtually in tact in 2005, though it was given a new name ("Silver"). An application of this approach then, supports the conclusion reached here that there was no substantial reduction in "the plan" as the Employer contends.

During the course of his testimony, the Association's Labor Relations Specialist representing the registered nurses at the Center, Jerry Hatalla, acknowledged that the Grievants were not challenging the Employer's right to eliminate altogether the "middle plan" in 2005. Similarly, the record confirms that the Association did not object to the unilateral introduction of the "High" and "Middle" plans in January of 2004, and Mr.

Hatalla conceded that the Administration acted within their prerogative when they decided to offer more than one option at that time. If, as the evidence conclusively demonstrates, Management had the authority to offer various options one year and reduce those from three to two the next in order to hold down spiraling costs, then it can be reasonably concluded that the use of the singular word "plan" refers to the base or minimum plan, and the intent of the parties in Section 29.1 was to guard against any significant diminishment of it alone. Moreover, there is nothing in the Contract that requires the Employer to offer more than one plan in any given year.

I am also persuaded in part by the Administration's argument that were the Grievants to prevail in this matter, then the Center would effectively be locked into any high option plan design with superior coverages that might be offered in any given year, regardless of the claims experience and related costs that might follow. Such a result would be counter-productive for both sides, as it would have a chilling effect on the Administration's willingness in the future to pursue other options with superior benefits, for fear of being obligated to continue the option even when it can no longer be justified financially. The High and Medium options offered beyond the base plan by the Administration in 2004, the

evidence shows, were made available to give employees a greater choice in fitting a health plan to their needs. As the vast majority of the registered nurses opted for that plan, it is certainly understandable that the new options offered last year were not met with enthusiasm by most members of this bargaining unit. However, there can be no question but that the changes were made to address the very real concerns for controlling costs once the claims history and other data unique to this group was reviewed and evaluated by the Employer's stop loss provider.

Arguably, at least, the language in Section 29.1 is ambiguous, thus calling into play an application of such interpretative aids as the past practice of the parties. In this regard, one's year's existence of the "High" option plan and its various parts, does not constitute a lengthy and definitive practice that can withstand the balance of the evidence introduced here. Moreover, the parties' Labor Agreement contains a retention of benefits provision in Article 19 which is quite specific in its scope, limiting the maintenance of benefits to five specific areas enumerated therein.[5] Absent from this section is any mention of health insurance coverage. Furthermore, Section 19.3 reinforces this conclusion

[5] They are: credited standing based on compensated hours for purposes of computing vacation and salary increments; accrued and unused sick leave, personal days, vacation days, and; prescriptions drugs at cost

where the parties have crafted the following language:

> "The parties agree that except as set out in Section 19 all other practices and/or benefits that may have existed prior to the effective date of this Agreement *shall not form the basis for any past practice....*" (Joint Ex. 1; emphasis added).

What is perhaps more significant is the acknowledgment from the Association's chief witness that for a number of years the Employer has established the plan's premiums and that it is common practice for Management to do so:

> Employer: "There's nothing in the Contract that prohibits the Medical Center form unilaterally establishing the premiums, is that correct?
>
> * * *
> Hatalla: That is correct."[6]

In addition, the Administration's Director of Human Resources, Kirstin Swenson testified concerning her review of the Center's past records relative to this subject. They demonstrate that for a number of years, the Employer has unilaterally made changes to the health plan benefits in terms of increasing co-pays and deductibles, and moreover, that this was accomplished without challenge from the Association. Under cross-

[6] While the Administration has unilaterally established the premium to be paid for health insurance coverage by the registered nurses, the actual amount paid has been the subject of negotiations, and varies within the collective bargaining relationship between the Employer and the multiple unions representing its work force at the Center.

examination, Mr. Hatalla conceded that on a number of occasions in the past, the Employer has unilaterally increased co pays for employees, including the registered nurses bargaining unit, without objection from the Association. Further, he acknowledged that for some of the members, the rate of the premium is more important than the coverage.

Similarly, a cogent argument can be made that ambiguity in the critical language exists with regard to the term "benefits" as well. A review of the article, and the balance of the Agreement, reveals that nowhere is the level of benefits defined. The judgment is made here that the term "benefits" cannot be reasonably limited to coverages alone. In today's health care environment, It must also encompass what the employees are required to pay out of their own pockets in order to receive such "health benefit options" (Center's Exs. 5 – 8). There is ample evidence, in this instance, showing that the trade-off of keeping the higher plan option in calendar year 2005 for the bargaining unit members, would result in premium increases approaching 37%. This must be contrasted with the 12.5% increase for the two-tier Gold and Silver plans that were implemented. The record demonstrates that there is nothing in the parties' Labor Agreement to preclude the Employer from "carving out" the RN

group into a separate plan.[7] The Center's consultant on workplace benefits, James Young, testified that if the bargaining unit wanted to retain the 2004 three-tier options, they would have to be carved out from the balance of the work force at Regina and rated separately for underwriting purposes. This relatively small group (estimated to be approximately ninety employees) would then see a significant increase in premiums in order to retain the old coverage. Moreover, as testified to by Ms. Swenson, these higher premiums that the registered nurses would then pay in 2005, would exceed the additional claims paid under the former plans by over $21,000 (Employer's Exs. 13 & 14). This trade-off – the inordinate jump in premiums for retention of the old three-tier plan design – ultimately works to the disadvantage of the Grievants; is not mandated by either the language in the parties Master Contract, and; is inconsistent with their past practice. It is my judgment that ultimately the adoption of such an approach would in itself constitute a substantial diminishment in the benefits they would receive.

[7] In total there were approximately 600 employees affected by the changes – essentially all of the employees at the Center. The evidence shows that no other bargaining unit objected to the new plan.

**Award-**

Accordingly, for the reasons set forth above, the grievance is denied.

Respectfully submitted this 16th day of February, 2006.

Jay C. Fogelberg, Neutral Arbitrator